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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09683599
Filing Date: January 23, 2002
Appellant(s): SCOTT C. HARRIS

Scott C. Harris (Reg. No. 32,030)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 19, 2007 appealing from the Office action mailed O4, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments

The appellant's statement of the status of no amendment was filled subsequent to the final rejection dated November 22, 2006 contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A correct copy of appealed claims 1-20 appear on pages 18-21 of the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,445,822	Crill et al.	09/2002
7,007,076	Hess et al.	02/2006
5,893,095	Jain et al.	04/1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crill et al. U.S. Pat. No. 6,445,822 (hereinafter Crill) in view of U.S. Pat. No. 7,007,076 to Hess et al (hereinafter Hess).

3. Reference to claim 1, Crill teaches a system, comprising:

a client which allows entry of image information (col. 5, line 10 – 30 and Fig. 1, numeral 102, Crill teaches in step 102 creating search images that the user wants to search), and

a server, including a database associated with the server, said server connected to said client to receive said image information (col. 5, lines 34 – 37, Crill teaches candidate images maybe located on one or more centralized or distributed application servers, database servers, website servers or other devices) and using said image information to search said database associated with the server which meet criteria specified in said image information (col. 5, lines 9 – 30 and Fig. 1 and 2, Crill teaches comparing reference image with candidate image) and forming search results based on said image information (Fig. 1, numeral 108 and col. 5, lines 22 – 25, 108 provides to the user the results of comparison and the degree of matching and correlation).

Although the system discloses by Crill shows substantial features of the claimed invention (discussed above), it fails to explicitly teach a sever for items to be purchased. Nonetheless these limitations are well known in the art and would have been an obvious modification of the system disclosed by Hess. Hess teaches a sever for items to be purchased (abstract and Fig. 2-3). Given the teachings of Crill and Hess, it would have been obvious for a person having ordinary skill in the art at the time the invention was made to combine Crill and Hess in order to allow prospective purchaser to make a more informed decision by providing an improved user interface for online commerce sites (col. 2, line 1-10).

4. Regarding 10, Crill teaches a method, comprising:

entering image information to a client on the network (col. 5, line 10 – 30 and Fig. 1, numeral 102, Crill teaches in step 102 creating search images that the user wants to search); and

sending said image information to a server on said network and using said image information to search database information on said server on said network (col. 5, lines 34 – 37, Crill teaches candidate images maybe located on one or more centralized or distributed application servers, database servers, website servers or other devices and see col. 5, lines 9 – 30 and Fig. 1 and 2, where Crill teaches comparing reference image with candidate image)); and returning search results from said server to said client (Fig. 1, numeral 108 and col. 5, lines 22 – 25, 108 provides to the user the results of comparison and the degree of matching and correlation). Nonetheless, Crill

fails to teach returning search results from said server to said client included price information associated with items in said search results. However, Hess teaches returning search results from said server to said client included price information associated with items in said search results (See Fig. 1 and 9A) There it would have been obvious for a person having ordinary skill in the art at the time of the invention to include price information because it would have allowed the user to make informed decisions (col. 2, lines 1 –7).

5. Reference to claim 2, Crill teaches wherein said client allows forming initial image information, and subsequently setting parameters associated with said initial image information using a user interface (see col.6, line 56 – 30).

6. As to claims 3 and 13, Crill teaches wherein one of said parameters associated with said image information includes exclusion information to exclude from said search results, and said server forms said search results which do not include said exclusion information (see col.7, line 17 – 31, when cropping the image, it is excluding. The cropping is done to a reference image which an image that is going to be searched).

7. Claim 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crill in view of Hess and further in view of Jain et al, U.S Pat. No. 5,893,095 (hereinafter Jain). Crill teaches, wherein one of said parameters includes a selection of a more important image portion, which is more important than other image portions, (see. Col.

18, line 63 – col. 19, line 11). Crill and Hess do not explicitly teach said client forms search results which are weighted according to said more important image portion. However, Jain discloses said client forms search results which are weighted according to said more important image portion (see col. 3, line 30 – 40). Therefore, it would have been obvious for a person having ordinary skill in the art at the time of the invention to combine the teachings of Crill, Hess and Jain in order to show the most similar image, eliminating the need for searching through all the results by the user.

8. Regarding claims 5 and 15, Crill wherein one of said parameters includes an image size, and said client forms search results which only include results having said specified image size (col. 7, line 17 – 31).

9. As to claim 6, Crill teaches a system as in claim 2, wherein said client includes a scanner to allow entry of said initial image information (col. 6, line 56 – 66).

10. Reference to claim 7, Crill teaches a system as in claim 2, wherein said client includes a tablet to allow entry of said initial image information (col. 6, line 56 – 66).

11. As to claim 8, Crill teaches a system as in claim 2, wherein one of said parameters associated with said image information includes a color, and said server

operates to find items based on said color information in addition to said image information (col. 7, line 1 –16)

12. Regarding claim 9, Crill does not explicitly teach wherein said server is associated with an electronic commerce site, and said search results include price information for items associated with said search results. However, these limitations are well known in the art and would have been an obvious modification of the system disclosed by Crill, as evidenced by Hess. Hess teaches search results include price information for items associated with said search results (see Fig. 1 and 9A). Given the teachings of Crill and Hess, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Crill by the well known or conventional features of online shopping such as disclosed by Hess, in order to enable the user to make informed decisions.

13. Claim 11, has similar limitations as to claim 2, therefore, it is rejected under the same rational of claim 2.

14. As to claim 14, Crill discloses a method as in claim 1 3, wherein said exclusion information includes image information (see col.7, line 17 – 31).

15. Reference to claim 16, Crill teaches a method as in claim 11, further comprising displaying said image information as part of a graphical user interface, and using said

graphical user interface to enter said parameters (Fig. 2 and col.. 6, line 56 – col. 7, line 16).

16. Claim 17 has similar limitations as to claims 1 and 10 and although claims 1 and 10 are not identical of claim 17, claim 17 does not further teach or differ over the limitations thought by claims 1 and 10. Therefore, claim 17 is rejected under the same rational as claims 1 and 10.

17. Regarding claim 18, Crill teaches wherein searching image information includes an image, and additional information about the searching, in addition to said image (col. 6, line 56 – 31).

18. Claim 19 has the same limitations as claims 3 and 13, thus it is rejected under the same rational.

19. Claim 20 has the same limitations as claim 8; therefore, it is rejected under the same rational.

(10) Response to Argument

Applicant's arguments filed October 19, 2007 have been fully considered but they are not persuasive. The applicant states on page 6 of the Appeal Brief that the prior Art teaches all of the limitations of claim 1. However, the applicant argues that there is no

motivation or suggestion for combining the two references. The motivation for combining the two references is found in Hess as explained in the Final Rejection (see Hess, col. 2, line 1-10). Crill teaches a system where a user can provide an image that the user wants to search for by comparing the reference image with the candidate images which are stored on centralized or distributed databases of images such as websites. The result of the comparison which is based on the reference image and candidate image is provided to the requesting client (see abstract and col. 2, line 38 – col. 3, line 40). Crill does not teach searching candidate images for items to be purchased. However, Hess teaches a user query (based on image description information) to preview items for sale or purchase (abstract). Thus, it would have been obvious to one having ordinary skill in the art to combine searching images to preview items for purchase thought by Hess and searching and comparing images of Crill to achieve the predictable result of allowing prospective purchaser to make a more informed decision by providing an improved user interface for online commerce sites (see col. 2, lines 1-10).

In response to applicant's argument on page 7 of the Appeal Brief that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case,

there is a motivation of allowing prospective purchaser to make a more informed decision by providing an improved user interface for online commerce sites (see col. 2, lines 1-10).

In response to applicant's argument that "the prior art does teach various features that could be used as technology that could carry out the claimed subject matter, but the prior art does not actually teach or suggest using that technology in the way claimed", the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

The applicant argues on page 8 of the Appeal Brief that "Hess teaches that a user provides a textual description and terms for an item" and "there is not one word in Hess, however about searching through those images using an image search technique". First of all, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., searching by using an image search technique) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Second, image searching is thought by Crill the primary reference (see the above rejection).

In response to applicant's argument on page 9 of the Appeal Brief that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The applicant argues on page 13 of the Appeal Brief that cropping of Crill is not the same as exclusion information to exclude from the search results. The examiner disagrees. The applicant correctly recognized that cropping takes information out of the image. Crill teaches searching information with images, so when an image is cropped before searching exclusion information is excluded. The search results are presented to the client excluding the information taken out of the image. The examiner also noticed that applicant is defining image information differently. The applicant argued on page 8 of the Appeal Brief that Hess teaches a textual description and terms for searching an item and that he does not teach searching images using an image search technique. However, on page 13, the applicant argues that image information used to initiate a search is not an image because cropping is done on an image.

The applicant argues in regards to claim 4 that Jain fails to teach selecting a more important image portion. Crill teaches selecting a more important image portion and Jain teaches client forms search results which are weighted according to said more

important image portion (see col. 3, line 30 – 40). Again in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In regards to claim 9, the applicant argues that price information associated with the search result is not well known in the art. Anyone who has used EBay knows that price information is available in most search results. Moreover, Hess does teach price information associated with the search result (see Fig. 1 and 9A).

In regards to claim 10, the applicant argues that the references fails to teach searching image information and returning price results associated with items in the search results. Crill teaches entering image information to a client on the network (col. 5, line 10 – 30 and Fig. 1, numeral 102, Crill teaches in step 102 creating search images that the user wants to search); and sending said image information to a server on said network and using said image information to search database information on said server on said network (col. 5, lines 34 – 37, Crill teaches candidate images maybe located on one or more centralized or distributed application servers, database servers, website servers or other devices and see col. 5, lines 9 – 30 and Fig. 1 and 2, where Crill teaches comparing reference image with candidate image)); and returning search results from said server to said client (Fig. 1, numeral 108 and col. 5, lines 22 – 25, 108 provides to the user the results of comparison and the degree of matching and correlation). Nonetheless, Crill fails to teach returning search results from said server to

said client included price information associated with items in said search results. However, Hess teaches returning search results from said server to said client included price information associated with items in said search results (See Fig. 1 and 9A) Therefore, it would have been obvious for a person having ordinary skill in the art at the time of the invention to include price information because it would have allowed the user to make informed decisions (col. 2, lines 1 –7). Again in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In regards to claim 15, the applicant argues that the reference fails to teach size information. Crill teaches creating an image for searching. When the size of the circle is modified, the search is modified and size information is entered. Therefore, Crill does teach size information.

In regards to claim 17, the applicant argues that the references fail teach price information and return search results to match search information. Crill teaches a system comprising a computer, connected to a publicly available network (see fig. 2) and including a database associated therewith (fig. 2), said database including image information for each of a plurality of items (col. 5, lines 34 – 37, Crill teaches candidate images maybe located on one or more centralized or distributed application servers, database servers, website servers or other devices and see col. 5, lines 9 – 30 and Fig. 1 and 2, where Crill teaches comparing reference image with candidate image), said

computer accepting image information over said publicly available network (see col. 2 line 40 to col. 3, line 61), using said image information to search said image information in said database, to return search results including items from said database which match said searching image information for each of said items from said database which match said searching information (see col.2, line 40 - col. 3, line 61). Crill does not teach items to be sold over said publicly available network and price information for each of said items and retuning price information for each of said items. However, Hess teaches items to be sold over said publicly available network and price information for each of said items and retuning price information for each of said items (see Fig. 1 and 9A). Therefore, it would have been obvious for a person having ordinary skill in the art at the time the invention was made to combine Crill and Hess in order to achieve the predictable result of allowing prospective purchaser to make a more informed decision by providing an improved user interface for online commerce sites (col. 2, line 1-10).

Again, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

For the above reasons, it is believed that the rejection should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Sahera Halim

December 31, 2007

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